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Date: July 6, 2004 **Number of pages (including cover):** 5

To: Examiner Melvin H. Pollack, U.S. Patent and Trademark Office

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Fax No.: (703) 872-9306

Serial No.: 09/474,607

Title: **METHOD AND APPARATUS FOR USING MULTIPLE PATHS FOR
PROCESSING OUT OF BAND COMMANDS**

OFFICIAL

From: Richard F. Giunta

Direct dial: 617.646.8322

Our File #: E0295.70136US00

CERTIFICATE OF FACSIMILE TRANSMISSION 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being transmitted via facsimile to the attention of Examiner Melvin H. Pollack, FAX number (703) 872-9306, at the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, in accordance with 37 C.F.R. §1.6(d), on the 6th day of July, 2004.

Richard F. Giunta, Reg. No. 36,149

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MESSAGE: Transmitted herewith is an Agenda for Telephone Interview.

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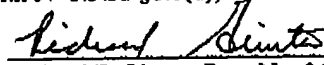
DOCKET NO: E0295.70136US00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Fred Oliveira et al.
Serial No: 09/474,607
Confirmation No: 2467
Filed: December 29, 1999
For: METHOD AND APPARATUS FOR USING MULTIPLE
PATHS FOR PROCESSING OUT OF BAND COMMANDS
Examiner: Melvin H. Pollack
Art Unit: 2141

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Richard F. Giunta, Reg. No. 36,149

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

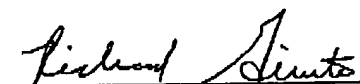
Transmitted herewith are the following documents:

- ☒ Agenda for Telephone Interview
- ☒ Return Receipt Postcard

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at (617) 720-3500, Boston, Massachusetts.

A check is not enclosed. If a fee is required, the Commissioner is hereby authorized to charge Deposit Account No. 23/2825. A duplicate of this sheet is enclosed.

Respectfully submitted,
Fred Oliveira et al., Applicant


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Docket No. E0295.70136US00
Date: July 6, 2004

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AGENDA FOR TELEPHONE INTERVIEW

Sir:

Applicants have requested a telephone interview with the Examiner and his supervisor, tentatively scheduled for July 7, 2004. The Examiner requested an agenda in advance of the interview.

1. Overriding Goal is to Reach Closure

As the Examiner has recognized (final Action, ¶2), prosecution in this case has been extensive, and both sides have expended significant effort to reach agreement. The Examiner's efforts in this regard are appreciated. Applicants' goal for the interview is to make a determination as to whether there is a possibility of reaching agreement as to the patentability of the independent claims, or whether the Examiner and Applicants will simply agree to disagree such that an appeal may be necessary.

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**2. Bypassing A Layer In A Host Computer
Rather Than In A Network**

As the Final Office Action suggests (§10), the Examiner is interpreting the claims in a manner different than Applicant's believe is appropriate. Upon reviewing the papers again, the undersigned noted that the Weston-Dawkes and Eslambolchi references both relate to networks, such that the combined teachings of these references similarly relate to a network. By contrast, the layers that are by passed by out of band control commands as recited in Applicant's claims are layers within a single device (i.e., a host computer). For example, this is specifically recited in claim 15, which recites the out of band control command as "bypassing at least one layer in a normal read/write path in the host computer."

While this distinction has not been a focus during prosecution, Applicants believe that it may be at the heart of the disagreement between the Examiner and Applicants as to the relevance of the applied prior art. It is noted that the Final Office Action does not point to any portion of the prior art that is believed to meet this limitation. (See §22, that rejects claim 15 by referring to the method of claim 1 which does not recite this distinction as explicitly), likely due to the fact that it has not been a focus of Applicants' argument.

Applicants would like to discuss how this limitation distinguishes over the prior art of record, and whether clarifying amendments to one or more of the other independent claims relating to this feature might place the application in condition for allowance.

**3. Prior Art Doesn't Teach an Out of Band Command That Identifies a
Physical Path for its Transmission**

Applicants would like to briefly discuss the system that the Examiner believes would have resulted from the combined teachings of Weston-Dawkes and Eslambolchi. It is Applicant's view that to the extent these references are at all combinable (which Applicants do not concede), one of ordinary skill in the art may have been motivated to modify Weston-Dawkes to employ the configuration controller of Eslambolchi to reestablish virtual circuits in the Weston-Dawkes network after a failure, and that the connections between the configuration controller and the network components of Weston-Dawkes would be outside of the paths used for the transmission of data through the network.

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Applicants would like to further discuss the limitations in the independent claims relating to the concept of an out of band control command that identifies a target physical path for transmission of the command itself. In this respect, the Weston-Dawkes and Eslambolchi references both relate to networks, wherein a command simply identifies a target address, but not any particular physical path for its transmission, as it is the network components that determine the appropriate physical path for transmission of the command from its source to its target address. Applicants believe that this feature distinguishes over any combination of the prior art references of record, and would like to discuss how the Examiner believes this limitation is met by the prior art, or possibly whether any potentially clarifying amendments can be made to capture this distinction in a way that addresses the Examiner's concerns.

4. Conclusion

If there are any questions concerning the foregoing, please contact the undersigned at the number listed below.

Respectfully submitted,
Fred Oliveira et al., Applicant



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